

**Attn: Michael B. Adlin, Interlocutory Attorney**

Trademark Trial and Appeal Board

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Alexandria, VA 22313-1451

**TTAB**

Eric Watson

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Everett WA 98203

RE: Opposition No. 91183905 Google Inc. v. Eric Watson

April 21, 2010

# 77020099

Dear Sir:

The idea that I no longer have an interest in pursuing this matter is completely false. There are a myriad of factors that have made it extremely difficult to attend to this case, and I will attempt to summarize as much as possible below. Please consider this a personal declaration, as I have not had a formal opportunity to present my own case thus far. I apologize in advance for any incorrect format.

**BACKGROUND AND HISTORY**

In addition to being a full-time firefighter for the past 16 years, I have been a serial entrepreneur both in hobby and in attempting to provide for my family. As it relates to this case, the most significant business in which I have been involved is a company called Kidz Kabz, LLC which I created in 2000 to address the transportation needs of pre- and school age children. I am passionate about helping people and have also always been a visionary, delighting in the ability to foresee technology which will improve lives and generally lead to better business and a productive economy. Unfortunately, because of a number of personal and financial factors, I have yet to capitalize on my ideas in 10 years.

One of my goals for Kidz Kabz was to be able to provide the ultimate service in safe and reliable transportation by incorporating into our website, the ability for parents to log on at anytime to monitor the progress of their child's transit through real-time video and continuous GPS and driver updates. At the time, there was no technology available to accomplish this task as there is today. Eventually in 2004, due to issues in my marriage and a lack of ability to devote the resources necessary to my business, I had to dissolve the company before I could fully realize its tremendous potential. Between 2004-2005, I had brainstormed many other ideas which came directly from my experience in that business, and throughout the year, I had purchased many domain names in order to secure a internet destination for some of my potential future businesses. Buying domain names for use in the future was a commonly accepted practice and was a necessity, since millions of domains were being sold every year, exponentially increasing the likelihood that a domain you wanted to use wouldn't be available once you



**04-23-2010**

finally got around to using it. In October of 2005 I had purchased the domain, GOOTUBE.COM along with at least a dozen other kid-centric domains (several of which also included the phonetic "GOO"). At the time, Youtube.com was in its infancy, and I had never even heard of it, as most of the world hadn't either. Also, I was vaguely familiar with the services of Google, and had only used their website for basic internet searches. I mention this, because at no time did I correlate either of those businesses with the assonance their names may have shared with the domains I purchased, nor would it have been possible for me or anyone else, including those entities themselves, to foresee their relationship over a year later.

My idea for GOOTUBE.COM was to be able to provide something for parents and kids along the lines of print, video, and rich media content (e.g. games and puzzles). It was a niche area that I saw nearly untouched in the market. My daughter was 2 years old, and having similar needs for this myself, I could not find websites addressing those needs. I always liked names that "rolled off the tongue" so to speak, with syllables that rhyme or have assonant qualities, as these are very easy to remember. I had thought that the combination of GOO, as commonly used for describing baby-talk, and TUBE, as commonly used for describing television, was a genius thought, and I purchased the domain name. At the very least, I thought I would have a perfect launch pad for selling goo in a tube, if I couldn't afford to do what I wanted with it.

As it happened, I ended up going through major life changes at that time because of family issues and subsequently lost nearly everything except my home, which incidentally was also in foreclosure. This was eventually sold too, so that I essentially had zero assets, and a marriage in turmoil. Obviously, I had absolutely no means to finance a new business venture, and in fact, by the end of 2006 I was facing the exorbitant costs of a very trying child custody dispute.

Around the this time, in October of 2006, Google surprised the world and made huge headlines by acquiring Youtube. The media took almost immediately to using the tongue-in-cheek mash-up GOOTUBE, in reference to this merger. Ironically, the only reason I knew about this, was that my email inbox became flooded with inquiries as to the status of this domain name, by opportunists who obviously wanted to somehow capitalize on owning this domain. I was never and would never be one of those people. In fact, within days of this announcement, I borrowed money from my parents and I filed a trademark application for GOOTUBE.COM in order to protect my intended business use of the name. I became intensely fearful that suddenly, thanks to sheer coincidence (or dumb luck, as they say), this name would be taken from me and that I would lose my ability to follow my dream of using it as I had planned.

Within 2 weeks of the merger, an internet blogger contacted me to get my opinion, and I responded with an honest commentary. He had also asked me if I would consider selling the name, and I suggested that I would sell under the right circumstances. I think that any prudent person, given the same situation and pressure, would have said the same thing, especially given the fact that I was nearly destitute at the time. Even though I contemplated it, I never did entertain any offers from anyone nor did I sell the name (even though I had offers), because I opted instead to stay true to my intention of preserving the use of this name for my own honest, ethical, and passionate purpose. Sadly, as much as I wanted to develop

my business, it was financially (and emotionally) impossible over the course of the next two years because of an expensive, stressful, and contentious divorce proceeding.

My trademark attorney was contacted within days of the final opposition date by Google attorneys to request an extension. Even though they waited until the last possible minute, we felt that it would be prudent to agree, in the interests of goodwill. There were several subsequent requests for extension by the Opposer which were also later granted. As far as I knew, there were no reasons given for the need to extend. With their unlimited legal and financial resources, I had assumed it inevitable that Google would out-manuever and outspend me as one of the strategies to undermine my trademark application. My attorney often represented me on a pro bono basis, as I obviously could not afford to pursue this with representation otherwise. However, his limited availability to me ended up being one of the major problems that contributed to a lack of response on my part throughout this action. He was not able to put much energy into this case, given his primary workload, and communication with me was infrequent and sporadic. Furthermore, I was not privy to the multitude of emails and phone conversations between him and the Opposer's attorneys, and I was largely uninformed. This is why I finally requested a direct conference in February 2009 with the Opposer, to become informed of the issues and clear up any misunderstandings.

On March 12, 2009, I had an open and candid phone conversation with Annabelle Daniel Varda, lasting about 30 minutes. I took the opportunity to explain and describe in detail, the history of how I came to the decision to choose the name and ultimately to apply for the trademark. During our conversation, Ms. Varda indicated that she did not think that there was any ill-intent with GOOTUBE.COM, but she did explain that I had no trademarks rights since I had not established use, and that was her main argument. She also expressed that on the web page associated with GOOTUBE.COM, there was an adult link, which was not consistent with my assertion that this was intended to be a child-friendly website. I made it very clear that the "parked" page was an automatically generated, ad-centric page created by a domain "parking" company which uses keywords from the domain name to generate relevant links on the page. The links, when clicked, generate small amounts of revenue for the parking company and domain owner while the domain is otherwise not being used. As the main keyword in this domain is the word "tube," naturally there were links generated that would direct a visitor to tube-related sites. The "tube-site" as it relates to the internet, has evolved to almost exclusively denote a website that displays or shares video content. The largest growth sector is probably adult "tube" sites, which is why my parking provider's algorithm would have selected such a link for display on the page. There are tens of thousands of "tube" websites proliferating on the internet, many of which are blatant copies of the Youtube.com business model, and which purchased their "tube" domain name well after the merger. It has become clear to me that the Opposer does not want me to have a trademark under which I would have the potential to operate in any similar fashion. Ms. Varda pressed several times for me to give her a dollar amount as a settlement figure in order for me to drop my trademark application. As with several previous email requests by their Seattle law firm to present a settlement offer, I refused at first because I felt there may be an implication that this was always my intent. I did not want a payoff. I wanted what I have always wanted since 2005, which is to run a business that would be successful and about which I could be passionate.

More than 6 months after that telephone conference, the Opposer presented me with Interrogatories and Discovery requests. Unfortunately, I was working 24-hour firefighter shifts, taking care of a 5-year old as a full-time single custodial parent, and had just been forced to start a new legal action in family court. These were all high priority items, and the pending trademark issue was something I just wasn't able to handle until now. Even as I write this, not only have I just completed a 3-month rigorous study regimen for a promotional Captain's test within my fire department, but I am also recovering from surgery two days ago. Prior to withdrawal by my trademark attorney, I had asked for an extension on the Admissions, Interrogatories and Discovery Requests based on my extraordinary extenuating circumstances and was flatly denied. I find that the denial was completely callous and unsympathetic, and also find it hypocritical and egregious considering our gracious acceptance of the long delays and continual requests for extensions by the Opposer earlier in this process.

In my conversation last year with Ms. Varda, she cited the story of David & Goliath, saying that she didn't want her company to come off as a bully. However, I feel that this case exemplifies exactly that. There are hundreds, if not thousands of websites which have unethically and blatantly copied the Youtube.com site after the merger, and even many more that are left unchecked to use Youtube.com video content as they see fit. I had a legitimate, narrowly focused, and unique use planned for my business idea and the name GOOTUBE.COM. I did everything the right way, except to miraculously come up with enough money, time, and energy to establish use of the name and make my dream a reality. I think that it is absolutely criminal that a company like Google can exert its monopolistic power and unlimited resources to suppress the ingenuity and aspirations of small-time, struggling entrepreneurs like myself, especially in today's economy. The settlement offer that I finally proposed under duress was nowhere near what I thought the lost business potential would be worth, but enough that I could let my aspirations for this particular business go, in favor of easing my stress, paying my attorney, and having a small amount of capital to start something else with the name GOOTUBE.COM instead. The Opposer has surely spent well over the amount proposed just in legal fees and time in dealing with this matter, so I can only assume that it is nothing more than a matter of principal, in essence, a continued effort to thwart and oppress anyone who comes near. It is very ironic that at the time that I purchased GOOTUBE.COM, not only was Youtube relatively unknown, but the company did not even have a trademark itself.

I respectfully request that at the very least, I be afforded due process and the ability to have the merits of my trademark application thoroughly review by the USPTO. Given some time, I can certainly provide answers to the Interrogatories and provide evidence to everything I have claimed in this statement. As well, I should be allowed the opportunity to ask questions and get discovery regarding the motives and business dealings of the Opposer in this case. However, I am only one man with a lot on his plate, and not an army of lawyers from the best law firms in the world as what represents the Opposer.

Thank You,



Eric Watson